FCC REPORT TO CONGRESS
AS REQUIRED BY THE ORBIT ACT

Adopted: June 12, 2007 Released: June 15, 2007

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EIGHTH REPORT

This report is submitted in accordance with Section 646 of the Open-Market Reorganization for the Betterment of International Telecommunications Act (the "ORBIT Act").[1]

Section 646 states:

> (a) ANNUAL REPORTS - The President and the Commission shall report to the Committees on Commerce and International Relations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate within 90 calendar days of the enactment of this title, and not less than annually thereafter, on the progress made to achieve the objectives and carry out the purposes and provisions of this title. Such reports shall be made available immediately to the public.
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> (b) CONTENTS OF REPORTS - The reports submitted pursuant to subsection (a) shall include the following:
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> (1) Progress with respect to each objective since the most recent preceding report.
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> (2) Views of the Parties with respect to privatization.
>
> (3) Views of the industry and consumers on privatization.
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> (4) Impact privatization has had on United States industry, United States jobs, and United States industry's access to the global marketplace.

I. Progress as to Objectives and Purposes

The purpose of the ORBIT Act is "to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat."[2]

The ORBIT Act, as originally passed in 2000: (1) mandates the privatization of INTELSAT and Inmarsat; (2) establishes criteria to ensure a pro-competitive privatization; (3) requires the Commission to determine whether INTELSAT, Inmarsat, and the INTELSAT spin-off, New Skies Satellites N.V. ("New Skies"), have been privatized in a manner that will harm competition in the United States; (4) requires the Commission to use the privatization criteria specified in the ORBIT Act as a basis for making its competition determination; and (5) directs the Commission to "limit through conditions or deny" applications or requests to provide "non-core" services to, from, or

[1] 47 U.S.C. § 765e (2000).

[2] 47 U.S.C. § 761 NOTE.

within the United States if it finds that competition will be harmed.[3] It provides for certain exceptions to limitations on non-core services in the event of such a determination. The Act also prohibits the Commission from authorizing certain "additional" services pending privatization consistent with the criteria in the Act.[4] In addition, the Act directs the Commission to undertake a rulemaking proceeding to assure users in the United States the opportunity for direct access to the INTELSAT system. In October 2004, Congress amended the ORBIT Act, adding Sections 621(5)(F) and (G), to provide a certification process as an alternative to the initial public offering ("IPO") requirements under Sections 621(5)(A) and (B). Additionally, in July 2005, Congress further amended the ORBIT Act, striking certain privatization criteria for Intelsat separated entities, removing certain restrictions on separated entities and successor to Intelsat and for other purposes.[5]

The Commission made its first report to Congress on its actions to implement the ORBIT Act on June 15, 2000, following enactment of the Act on March 17, 2000.[6] The Commission made its second report on June 15, 2001,[7] its third report on June 14, 2002,[8] its fourth report on June 11, 2003,[9] its fifth report on June 15, 2004, [10] its sixth report on June 15, 2005,[11] and its seventh report on June 15, 2006.[12] In anticipation of this eighth report, the Commission issued a Public Notice on March 22, 2007 inviting public comment.[13] Comments were filed by Inmarsat

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[3] The Act defines "non-core" services as "services other than public-switched network voice telephony and occasional-use television" with respect to INTELSAT, and as "services other than global maritime distress and safety services or other existing maritime or aeronautical services for which there are not alternative providers" with respect to Inmarsat. 47 U.S.C. § 769(a)(11).

[4] The Act defines "additional" services as "direct-to-home" ("DTH") or direct broadcast satellite ("DBS") video services, or services in the Ka or V bands" for INTELSAT and as "those non-maritime or non-aeronautical mobile services in the 1.5 and 1.6 GHz band on planned satellites or the 2 GHz band" for Inmarsat. 47 U.S.C. § 769(a)(12).

[5] Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 (2000), *as amended*, Pub. L. No. 107-233, 116 Stat. 1480 (2002), *as amended,* Pub. L. No. 108-228, 118 Stat. 644 (2004), *as amended,* Pub. L. No. 108-371, 118 Stat. 1752 (October 25, 2004), *as amended,* Pub. L. No. 109-34, 119 Stat. 377 (July 12, 2005). In the July 2005 amendment to the ORBIT Act, Congress added a requirement that the Commission submit to Congress a separate annual report that analyzes the competitive market conditions with respect to domestic and international satellite communications services. The first Annual Report was released on March 26, 2007. *FCC Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, FCC 07-34, IB Docket No. 06-67 ("*Satellite Competition Report*").

[6] *FCC Report to Congress as Required by the ORBIT Act,* 15 FCC Rcd 11288 (2000).

[7] *FCC Report to Congress as Required by the ORBIT Act,* 16 FCC Rcd 12810 (2001).

[8] *FCC Report to Congress as Required by the ORBIT Act,* 17 FCC Rcd 11458 (2002).

[9] *FCC Report to Congress as Required by the ORBIT Act,* 18 FCC Rcd 12525 (2003).

[10] *FCC Report to Congress as Required by the ORBIT Act,* 19 FCC Rcd 10891 (2004).

[11] *FCC Report to Congress as Required by the ORBIT Act,* 20 FCC Rcd 11382 (2005).

[12] *FCC Report to Congress as Required by the ORBIT Act,* 21 FCC Rcd 6740 (2006).

[13] Public Notice, Report No. SPB-218, DA 07-1371, March 22, 2007.

PLC (formerly Inmarsat Group Holdings, Limited) ("Inmarsat"), and Intelsat LLC ("Intelsat").[14] No reply comments were filed.

A. Commission Actions and Activities

The Commission has undertaken a number of actions required by the ORBIT Act, or related to its objectives and purposes. The Commission has taken the actions described below to ensure that INTELSAT, Inmarsat, and New Skies have been privatized in a procompetitive manner, consistent with the privatization criteria of the Act.[15] The Commission has also taken actions to implement certain deregulatory measures in the Act.[16]

INTELSAT

- In August 2000, the Commission granted conditional licensing authority to Intelsat LLC, ("Intelsat"), a separate, privately held U.S. corporation, created by INTELSAT to hold U.S. satellite authorizations and associated space segment assets.[17] Under this licensing authority, the Commission permitted Intelsat LLC's licenses to become effective upon "privatization," meaning the transfer of INTELSAT's satellites and associated assets to Intelsat and the transfer of its International Telecommunications Union ("ITU") network filings to the U.S. registry. Intelsat LLC was granted conditional U.S. authorizations for INTELSAT's existing satellites, planned satellites, and planned system modifications associated with INTELSAT's frequency assignments in the fixed satellite services ("FSS") C- and Ku- bands existing as of privatization.[18]

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[14] Comments of Inmarsat PLC, filed on April 6, 2007 ("Inmarsat Comments"); and Comments of Intelsat LLC, filed on April 6, 2007 ("Intelsat Comments").

[15] 47 U.S.C. §§ 761, 763, 763a, 763b, 763c, and 765g.

[16] 47 U.S.C. §§ 765 and 765d(1).

[17] Application of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion, Order and Authorization*, 15 FCC Rcd 15460, *recon. denied,* 15 FCC Rcd 25234 (2000), *further proceedings,* 16 FCC Rcd 12280 (2001) ("*Intelsat Licensing Order"*).

[18] *Intelsat Licensing Order,* 15 FCC Rcd 15460. The conventional C-band refers to the 3700-4200/5925-6425 MHz frequency bands. Intelsat is also authorized to operate in the extended C-band frequencies 3625-3700/5850-5925/6425-6650 MHz on certain satellites at certain orbital locations. In addition, Intelsat is authorized to operate in the extended C-band frequencies 3420-3625 MHz on the Intelsat-805 satellite at 55.5º W.L. for service to non-US locations. The 3420-3600 MHz portion of this frequency band is not a satellite band in the United States and is operated by Intelsat outside the United States subject to potential interference from worldwide shipborne United States military radar operations. The conventional Ku-band refers to the 11.7-12.2/14.0-14.5 GHz frequency bands. Intelsat is also authorized to operate in the extended Ku-frequency bands 10.95-11.2/11.45-11.7/12.5-12.75/13.75-14.0 GHz on certain satellites at certain orbital locations.

- Later in 2000, INTELSAT adopted plans to distribute shares in Intelsat LLC to its Signatories on July 18, 2001.[19] In May 2001, the Commission found that, although the IPO required under the privatization requirements of the ORBIT Act had not yet been completed, INTELSAT would privatize in a manner consistent with the non-IPO privatization provisions of the ORBIT Act, upon completion of its plans to distribute Intelsat LLC shares to its Signatories.[20] INTELSAT later distributed shares to its Signatories as it had planned.

- On July 28, 2003, Loral Satellite Inc. ("Debtor-in-Possession" or "DIP"), and Loral SpaceCom Corporation (DIP), and Intelsat North America, LLC filed an application seeking authority to assign five non-common carrier space station licenses to Intelsat North America. On February 11, 2004, the Commission granted, subject to conditions, authority to assign those licenses subject to certain limitations.[21] Loral was providing services, such as DTH, that are "additional services" as defined by the ORBIT Act. Intelsat was granted authority to provide additional services to the then existing Loral customers.[22]

- Intelsat was originally required by the ORBIT Act to conduct an IPO by October 1, 2001, in order to "substantially dilute" ownership by former INTELSAT Signatories.[23] Subsequently, Congress amended the ORBIT Act several times to extend the deadline for Intelsat to conduct its IPO.[24] Ultimately, in May 2004, Congress amended the ORBIT Act, extending Intelsat's IPO deadline to June 30,

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[19] Upon privatization, former INTELSAT Signatories and non-Signatory investing entities were issued shares in Intelsat Ltd. according to their March 2001 investment shares in INTELSAT.

[20] Application of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 12313, 12290. (para 71) (2001) (*"Intelsat LLC ORBIT Act Compliance Order").*

[21] Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), and Intelsat North America, LLC, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Authorization and Order*, 19 FCC Rcd 2404 (Int'l Bur., 2004) ("*Loral/Intelsat Order")*. On March 4, 2004, the Commission adopted a Supplemental Order clarifying the date at which the Special Temporary Authority was to commence. Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), and Intelsat North America, LLC, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Supplemental Order*, 19 FCC Rcd 4029 (Int'l Bur., 2004).

[22] *Loral/Intelsat Order,* 19 FCC Rcd at 2429 (para 65).

[23] Pub. L. No. 106-180, 114 Stat. 48 (2000). (Congress also gave the Commission discretion to extend the IPO deadline to no later than December 31, 2002). INTELSAT LLC, Request for Extension of Time Under Section 621(5) of the ORBIT Act, *Order,* 16 FCC Rcd. 18185 (2001).

[24] Pub. L. No. 107-233, 116 Stat. 1480 (2002) (In October 2002, Congress amended the ORBIT Act to extend Intelsat's IPO deadline to December 31, 2003, and gave the Commission the discretionary authority to further extend the deadline to no later than June 30, 2004). INTELSAT LLC, Request for Extension of Time Under Section 621(5) of the ORBIT Act, *Order,* 18 FCC Rcd. 26290 (2003).

2005.[25] However, in October 2004, Congress added Sections 621(5)(F) and (G) to the ORBIT Act, to provide a certification process as an alternative to the IPO requirements under Sections 621(5)(A) and (B).[26]

- On December 22, 2004, the Commission authorized the transfer of control of Intelsat's licenses and authorizations to Zeus Holdings Limited ("Zeus"), a private equity group, organized under the law of Bermuda, which would acquire 100 percent of the equity and voting interests of Intelsat ("Zeus/Intelsat Transaction").[27] Zeus is wholly owned by 20 entities, which are ultimately controlled by four private equity fund groups. The fund groups are advised by Apax Partners, Apollo, Madison Dearborn and Permira, with each fund group holding 25 percent of the shares of Zeus.

- On April 8, 2005, the Commission determined that (a) Intelsat was in compliance with the alternative certification process under Sections 621(5)(F) and 621(5)(G) of the ORBIT Act; (b) that Intelsat can forgo the requirement for an IPO and the public listing of securities; and that (c) Intelsat was no longer subject to the provisions of Section 602 that prohibited Intelsat from providing "additional services."[28]

- On May 24, 2005, the Commission granted Intelsat LLC's request for approval of the *pro forma* assignments of space station authorizations and related Tracking,

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[25] Public Law No. 108-228, 118 Stat. 644 (2004). (In May 2004, Congress amended the ORBIT Act to extend Intelsat's IPO deadline to June 30, 2005 and gave the Commission the discretionary authority to further extend the IPO deadline to December 31, 2005).

[26] Public Law No. 108-371, 118 Stat. 1752 (October 25, 2004).

[27] *Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee, Consolidated Application for Consent to Transfers of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended*, IB Docket No. 04-366, Order and Authorization, DA No. 04-4034, 19 FCC Rcd 24820 (Int'l Bur., WTB and OET 2004) ("*Intelsat-Zeus Order*"). In early 2005, the Commission granted authority to interpose Intelsat Subsidiary Holding Company Ltd. into the chain of ownership and modified its foreign ownership ruling to include new Bermuda-based intermediate parent Intelsat Subsidiary Holding Company Ltd. *Intelsat, Ltd*., File No. ISP-PDR-20050203-00004, Grant of Authority, Public Notice, Report No. TEL-00884, DA No. 05-479, 20 FCC Rcd 4052, 4053 (Int'l Bur. 2005); *Intelsat North America LLC*, File No. SAT-T/C-20050203-00022, and *Intelsat LLC*, File No. SAT-T/C-20050203-00023, Grant of Authority, Public Notice, Report No. SAT-00276, DA No. 05-594 (Int'l Bur. Mar. 4, 2005), at 1-2; *Intelsat LLC*, File Nos. SES-T/C-20050203-00138, -00139 and -00140, and *Intelsat MTC LLC*, File No. SES-T/C-20050203-00141, Grant of Authority, Report No. SES-00691 (Int'l Bur. Mar. 2, 2005), at 26-27; *Intelsat USA License Corp*., File No. ITC-T/C-20050418-00279, *Intelsat General Corporation*, File No. ITC-T/C-20050418-00280, and *Intelsat MTC LLC*, File No. ITC-T/C-20050418-0281, Grant of Authority, Public Notice, Report No. TEL-00931, DA No. 05-2192 (Int'l Bur. 2005), at 3-4. During 2005, Zeus Holdings Limited changed its name to Intelsat Holdings, Ltd. *See, e.g., Intelsat USA License Corp*., Report No. TEL-00931, at 3.

[28] Intelsat, Ltd. Petition for Declaratory Ruling that Intelsat, Ltd. Complies With Section 621(5)(F) of the ORBIT Act, *Memorandum Opinion and Order*, FCC 05-86, IB Docket 05-18, 20 FCC Rcd. 8604 ("*Intelsat Certification Order*").

Telemetry and Control ("TT&C") earth station licenses, from Intelsat LLC to Intelsat North America LLC.[29]

- On June 19, 2006, the Commission approved the merger of Intelsat Holdings, Ltd. with PanAmSat Holding Corporation ("PanAmSat").[30] The FCC action approving the transaction granted applications for the transfer of control, to Intelsat, of Commission-issued licenses and authorizations held by PanAmSat and its subsidiaries. Upon consummation of the transaction on July 3, 2006, PanAmSat became a wholly-owned subsidiary of Intelsat continuing operation as a separate corporate entity.

- Since the June 15, 2006 Seventh Annual Report, Intelsat has filed a number of requests for license modifications. The Commission has reviewed these requests and acted on them consistent with the United States licensing process.[31]

Inmarsat

- Inmarsat privatized on April 15, 1999, prior to enactment of the ORBIT Act. The ORBIT Act specified a number of criteria for determining whether Inmarsat's privatization is pro-competitive. On October 9, 2001, the Commission released an

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[29] Intelsat LLC, Assignor, and Intelsat North America LLC, Assignee, Applications for Consent to Pro Forma Assignment of Space Station Authorizations and Related TT&C Earth Station Licenses, File Nos., SAT-ASG-20050418-00084, SAT-ASG-20050418-00085, SES-ASG-20050502-00519, SES-ASG-20050502-00520, SES-ASG-20050502-00562, DA-05-1545, Public Notice, Report No. SAT-00294, March 27, 2005.

[30] Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, PEOP PAS, LLC, Transferors, Intelsat Holdings, LTD, Transferee, Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp., *Memorandum Opinion and Order*, 21 FCC Rcd 7368 (2006).

[31] *See e.g.*, Intelsat North America LLC, Request for Special Temporary Authority to Drift the INTELSAT 601 Satellite from 64.25° E.L. to 63.65° E.L. and to Temporarily Operate at 63.65° E.L., File No., SAT-STA-20060808-00086, (stamp grant from Robert Nelson, Chief, Satellite Division to Sue Crandall, Counsel for Intelsat North America LLC, provided on September 21, 2006, with conditions); Intelsat North America LLC, Application to Modify the INTELSAT 601 Authorization, File No. SAT-MOD-20060919-00103, stamp grant from Cassandra Thomas, Deputy Chief, Satellite Division to Sue Crandall, Counsel for Intelsat North America LLC, provided on November 16, 2006, with conditions); Intelsat North America LLC, Application for Authority Launch and Operate the Intelsat America's 9 (IA-9) Satellite at 97° W.L., as amended, File Nos. SAT-RPL-20041015-00201, SAT-AMD-20050621-00131, SAT-AMD-20051118-00237, SAT-AMD-20060407-00040, (stamp grant from Robert Nelson, Chief, Satellite Division to Sue Crandall, Counsel for Intelsat North America LLC, provided on December 1, 2006, with conditions); Intelsat North America LLC, Application to Modify Authorization for the Intelsat Americas (IA-5) Satellite, File Nos. SAT-AMD-20060803-00084, SAT-AMD-20060922-00112 (stamp grant from Robert Nelson, Chief, Satellite Division to Sue Crandall, Counsel for Intelsat North America LLC, provided on December 1, 2006, with conditions). Additionally, as mentioned in last year's report, in February 2005, Intelsat North America LLC filed applications to operate in the 17/24 GHz BSS band. *See* Intelsat North America LLC, Application for Authority to Construct, Launch and Operate a Direct Broadcast Satellite system comprised of four satellites in the 17 GHz and 25 GHz Bands, IBFS File Nos. SAT-LOA-20050210-00028 (Call Sign S2659), SAT-LOA-20050210-00029 (Call Sign S2660), SAT-LOA-20050210-00030 (Call Sign S2661) and SAT-LOA-20050210-00031 (Call Sign S2662.)

Order in which it concluded that Inmarsat had privatized in a manner consistent with the non-IPO requirements of Sections 621 and 624 of the ORBIT Act.[32]

- In its decision, having found that Inmarsat had privatized in a manner consistent with the non-IPO requirements of the Act,[33] the Commission granted Comsat Corporation; Stratos Mobile Networks, LLC; SITA Information Computing Canada, Inc.; Honeywell, Inc.; Marisat Communications Network, Inc.; and Deere & Company regular earth station authority to use certain Inmarsat satellites for communications services to, from, or within the United States.

- The Commission also granted several other earth station applications to communicate with Inmarsat's satellites as a point of communication.[34]

- The ORBIT Act originally required Inmarsat to conduct an IPO no later than October 1, 2000.[35] Subsequently, Congress amended the ORBIT Act several times to extend the deadline for Inmarsat to conduct an IPO.[36] Ultimately, in October 2004, Congress amended the ORBIT Act, extending the IPO deadline until June 30, 2005 and adding Sections 621(5)(F) and (G) to provide a certification process as an alternative to the IPO requirements under Sections 621(5)(A) and (B).[37]

- On June 14, 2005, the Commission determined that Inmarsat was in compliance with the alternative certification process under Sections 621(5)(F) and 621(5)(G) of the ORBIT Act, that Inmarsat could forgo the requirement for an IPO and the public listing of securities, and that Inmarsat was no longer subject to the provisions of Section 602 that prohibited Inmarsat from providing additional services.[38]

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[32] Comsat Corporation et. al., *Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 21661 (2001) ("*Inmarsat ORBIT Act Compliance Order")*.

[33] 47 U.S.C. § 761(a), which precludes Commission authorization of additional services by Inmarsat until Inmarsat has privatized in accordance with the Act.

[34] *See e.g.,* Exxon Communications Company, SES-LIC-20040413-00548 (granted August 31, 2004 to access the INMARSAT Ltd. 1 satellite at 15.5º W.L., the INMARSAT Ltd. 3 satellite at 178º E.L., and the INMARSAT Ltd. 3 satellite at 54º W.L.); Telenor Satellite, SES-MOD-20041029 (granted March 4, 2005 to access INMARSAT Ltd. 3 satellite at 15.5º W.L., INMARSAT Ltd. 3 satellite at 54º W.L., INMARSAT-2 AOR-EAST satellite at 17º W.L., and INMARSAT-2 AOR-WEST satellite at 98º W.L.).

[35] Pub. L. No. 106-180, 114 Stat. 48 (2000).

[36] On June 30, 2003, Congress extended Inmarsat's IPO deadline to June 30, 2004, and gave the Commission discretion to further extend this deadline to no later than December 31, 2004. ORBIT Technical Corrections Act of 2003, Pub. L. No. 108-39, § 763, 117 Stat. 835 (2003). Inmarsat Ventures Limited Request for Extension of Time under Section 621(5) of the Communications Satellite Act of 1962, as amended by the Open-Market Reorganization for the Betterment of International Telecommunications Act, *Order,* 19 FCC Rcd 11387 (2004).

[37] Public Law No. 108-371, 118 Stat. 1752 (October 25, 2004).

[38] Inmarsat Group Holdings Limited Petition for Declaratory Ruling that Intelsat, Ltd. Complies With Section 621(5)(F) of the ORBIT Act, *Memorandum Opinion and Order*, IB Docket 04-439, FCC 05-126 (2005) ("*Inmarsat Certification*").

- In 2005, 2006, and 2007, the following Inmarsat resellers filed applications to continue or, in some cases to commence, operations of mobile earth terminals ("METs") and gateway land earth stations ("LESs") in the United States via the recently launched Inmarsat 4F2 satellite: BT Americas, Inc. ("BT Americas"), FTMSC US, LLC ("FTMSC"), MVS USA, Inc. ("MVS USA"), Satamatics, Inc. ("Satamatics"), SkyWave Mobile Communications Corp. ("SkyWave"), Stratos Communications, Inc. ("Stratos"), Telenor Satellite, Inc. ("Telenor"), Thrane and Thrane Airtime, LTD ("Thrane & Thrane"), and Horizon Mobile Communications, Inc. ("Horizon").[39] These applications are pending. In January 2006, the Commission granted special temporary authority to the resellers to continue MET operations via the Inmarsat 4F2 satellite that the Commission previously authorized via the Inmarsat 3F4 satellite.[40] In May 2006, the Commission granted special temporary authority to BT America, FTMSC, MVS USA, Stratos, and Telenor to provide Inmarsat's new Broadband Global Area Network ("BGAN")[41] in the United States via the Inmarsat 4F2 satellite.[42] In June 2006, the Commission granted special temporary authority to provide BGAN service to an additional reseller, Thrane & Thrane.[43] In 2006 and 2007, pursuant to Section 1.62 of the Commission's rules operations authorized by these STAs have continued, where requested, since the initial STA grants.[44]

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[39] IBFS File Nos. SES-LFS-20060303-00343 (Call Sign E060076); SES-LFS-20051011-01396 (Call Sign E050284); SES-LFS-20051123-01634 (Call Sign E050348); SES-MFS-20051202-01665 (Call Sign E020074); SES-MFS-20051207-01709 (Call Sign E030055); SES-LFS-20050826-01175 (Call Sign E050249), SES-MFS-20051122-01614 (Call Sign E000180); SES-MFS-20051122-01615 (Call Sign E010050); SES-MFS-20051122-01616 (Call Sign E010048); SES-MFS-20051122-01617 (Call Sign E010049); SES-MFS-20051122-01618 (Call Sign E010047); SES-LFS-20050930-01352 (Call Sign E050276); SES-MFS-20060118-00050 (Call Sign E000280); SES-MFS-20060118-00051 (Call Sign E000282); SES-MFS-20060118-00052 (Call Sign E000283); SES-MFS-20060118-00053 (Call Sign E000285); SES-MFS-20051123-01626 (KA312); SES-MFS-20051123-01627 (Call Sign KA313); SES-MFS-20051123-01629 (Call Sign WA28); SES-MFS-20051123-01630 (Call SignWB36); SES-LFS-20060522-00852 (Call Sign E060179); SES-LFS-20070109-00042 (Call Sign E070006).

[40] *See* Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00788 (rel. Jan. 25, 2006).

[41] The BGAN service is a mobile or portable application that supports both Internet protocol ("IP") packet-switched data and circuit-switched applications. Inmarsat indicates that the BGAN data transmission rates will allow customers to access to e-mail, local area networks, the Internet, intranet/extranet, video conferencing services, video-on-demand, and voice communications (including Voice over IP) from almost anywhere in the world.

[42] *See* Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00821 (rel. May 17, 2006).

[43] *See* Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00835 (rel. July 5, 2006).

[44] *See e.g.* Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00907 (rel. March 7, 2007); Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00909 (rel. March 14, 2007); Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00913 (rel. March 28, 2007); Actions Taken, Satellite

New Skies Satellites

- New Skies is the Netherlands-based INTELSAT spin-off, created in 1998 as INTELSAT's first step toward privatization. On March 29, 2001, the Satellite Division added four satellites operated by New Skies to the Commission's Permitted Space Station List[45] ("Permitted List") with conditions to remove secondary status requirements for certain New Skies' satellites.[46] This action enabled New Skies to provide satellite services to, from, and within the United States on a full-term basis.[47]

- On June 25, 2004, the Commission granted an application to transfer control of Commission licenses and authorizations held by New Skies Satellites N.V and New Skies Networks, Inc. to New Skies Satellites B.V.[48]

- On January 6, 2006, New Skies Satellites Holdings Ltd. and SES GLOBAL S.A. filed an application seeking approval to transfer control of Commission authorizations held by New Skies Networks, Inc. ("NSN") to SES GLOBAL.[49] On March 29, 2006, the Commission approved the transfer of control of NSN licenses for six non-common carrier earth stations for communication with non-U.S. licensed satellites that have been added to the Commission's Permitted List.[50] The Commission also approved the transfer of control of three non-U.S. satellites

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Communications Services Information, *Public Notice*, Report No. SES-00923 (rel. May 2, 2007); Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00927 (rel. May 16, 2007); and Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00929 (rel. May 23, 2007). *See also* 47 C.F.R. §1.62 (a)(1).

[45] The Permitted List denotes all satellites and services with which U.S. earth stations with "routinely" authorized technical parameters operating in the conventional C- and Ku-bands ("ALSAT" earth stations) are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' licenses. Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic International Satellite Service in the United States, *First Order on Reconsideration*, 15 FCC Rcd 7207 (1999).

[46] New Skies Satellites, N.V., DA 01-513, *Order*, 16 FCC Rcd. 7482 (Int'l Bur., Sat. and Rad. Div., rel. March 29, 2001).

[47] *See* New Skies Satellites, N.V., Petition for Declaratory Ruling, *Order*, 16 FCC Rcd 6740 (Sat. and Radio. Div., 2001).

[48] *See* Application of New Skies Satellites N.V. (Transferor) and New Skies Satellites B.V. (Transferee) Transfer Control of FCC Licenses and Authorizations Held by New Skies Satellites N.V. and New Skies Networks, Inc., 19 FCC Rcd 21232 (2004).

[49] File No. SES-T/C-20060106-00013, as amended by File No. SES-AMD-20060320-00471 ("Transfer of Control Application"). *See also* Letter from Peter A. Rohrbach and Karis A. Hastings, Counsel for SES GLOBAL, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 06-23 (filed Mar. 21, 2006) (providing revised Exhibit E to File No. SES-T/C-20060106-00013 ("March 21 Section 1.65 Letter")).

[50] *See* Permitted List, *available at* http://www.fcc.gov/ib/sd/se/permitted.html.

operated by New Skies that the Commission has authorized to provide service to the United States pursuant to the Permitted List.[51] The merger was consummated on March 30, 2006.

- Since privatization, the Commission also granted several requests from earth station operators to add New Skies satellites as a point of communication.[52]

- In 2007, earth station operators with ALSAT authority have continued to have authority to access New Skies Satellites on the Commission's Permitted List.[53] Further, the Commission granted one earth station specific authority to communicate with a New Skies satellite.[54]

Status of Comsat

- The ORBIT Act terminated the Communications Satellite Act of 1962's ownership restrictions on COMSAT Corporation ("Comsat"). As a result, Lockheed Martin and Comsat jointly filed an application with the Commission for transfer of control of Comsat's various licenses and authorizations. On July 31, 2000, the Commission found that Lockheed Martin's purchase of Comsat was in the public interest and authorized Comsat to assign its FCC licenses and authorizations to a wholly-owned subsidiary of Lockheed Martin Corporation.[55]

- On December 18, 2001, the Commission granted Lockheed Martin Global Telecommunications, COMSAT Corporation, and COMSAT General Corporation,

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[51] *See* New Skies Satellites Holdings LTD, Transferor, and SES Global S.A., Transferee, Applications to Transfer Control of Authorizations Held By New Skies Networks, Inc. and Notification of Change to Permitted Space Station List, DA 06-699, IB Docket No. 06-23, 21 FCC Rcd. 3194, *Public Notice* (Int'l Bur. approved the transfer of control with conditions) (2006).

[52] We note that earth stations that meet the Commission's two-degree spacing technical requirements and operate in the conventional C- or Ku frequency bands can obtain ALSAT authority which allows the earth station to communicate with any satellite on the Commission's Permitted List. *See* note 44 above. Currently, New Skies Satellites has three space stations on the Permitted List (NSS-806 @ 40.5° W.L., NSS-5 @ 177° W.L. and NSS-7 @ 22° W.L.). Therefore, of the more than 8670 earth stations that have ALSAT authority, any one of these earth stations can communicate with these New Skies satellites, in the conventional C-or Ku- frequency bands, without any further authorization.

[53] *See* note 52 above.

[54] An earth station must seek specific authority to communicate with a space station if the earth station does not meet the technical requirements for an ALSAT designation and/or if the earth station seeks to communicate with a satellite in frequency bands other than the conventional C and Ku-frequency bands. One example of an authorization granting specific access to a New Skies' Space Station is: Newcom International, Inc., SES-MOD-20070223-00275, authority granted on April 10, 2007 to communicate with the NSS-7 satellite at 22º W.L. orbital location. *See also* note 52 above.

[55] *See* Lockheed Martin Corporation, Comsat Government Systems, LLC, and Comsat Corporation, Applications for Transfer of Control of Comsat Corporation and Its Subsidiaries, Licensees of Various Satellite, Earth Station Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214*, Order and Authorization*, 15 FCC Rcd 22910 (2000), *erratum*, 15 FCC Rcd 23506 (Sat. and Radio. Div., 2000); *recon. denied*, 17 FCC Rcd 13160 (2002).

together with Telenor Satellite Services Holdings, Inc., Telenor Satellite, Inc., and Telenor Broadband Services AS's request to assign certain Title II common carrier authorizations and Title III radio licenses held by COMSAT to Telenor.[56] The assignment was in connection with Telenor's acquisition of Comsat Mobile Communications ("CMC"), a business unit of COMSAT Corporation. On January 11, 2002, Telenor completed its purchase of substantially all of the assets of CMC, and all of CMC's licenses and authorizations were transferred to Telenor pursuant to Commission authorization.[57]

- On October 25, 2002, the Commission granted Comsat and Lockheed Martin jointly filed applications to assign four non-common carrier earth station licenses and an Experimental License to Intelsat LLC.[58]

- On May 28, 2004, COMSAT General Corporation, Lockheed Martin, COMSAT New Services, Inc. and Intelsat LLC and Intelsat MTC LLC filed a series of applications associated with a transaction by which Intelsat, Ltd. would acquire Lockheed Martin's COMSAT General businesses.[59] On October 27, 2004, the Commission granted the applications, subject to compliance by Intelsat LLC, Intelsat MTC LLC and Intelsat Government Solutions Corporation with the terms of the Intelsat Commitment letter with the Criminal Division of the U.S. Department of Justice, the U.S. Department of Homeland Security, and the Federal Bureau of Investigation.[60] On October 29, 2004, the transaction was completed.[61]

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[56] Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor and Telenor Satellite Mobile Services, Inc. and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land MobileRadio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization*, 16 FCC Rcd 22897 (2001), *erratum,* 17 FCC Rcd 2147 (Int'l Bur. 2002).

[57] *See* Comments Invited on Telenor Satellite Services Holdings, Inc. Petition for Declaratory Ruling on Inapplicability of Cost Accounting Requirements, *Public Notice*, 17 FCC Rcd 2444 (2002).

[58] Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Digital Teleport, Inc., Assignors, and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC and Intelsat USA License Corp., Application for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling, IB Docket No. 02-87, *Order and Authorization,* DA 02-2254, 17 FCC Rcd 27732, (Int'l Bur. & Wireless Tel. Bur. 2002) (*"Lockheed/Comsat/Intelsat Order"*).

[59] Comsat General Corporation, Lockheed Martin Global Telecommunications LLC, Comsat New Services, Inc., Intelsat LLC, and Intelsat MTC LLC, Seek FCC Consent to Assign Licenses and Authorizations and a Declaratory Ruling on Foreign Ownership, Pleading Cycle Established, *Public Notice*, IB Docket No. 04-235, 19 FCC Rcd 11390 (2004).

[60] Applications of Comsat General Corporation, Lockheed Martin Global Telecommunications LLC, Comsat New Services, Inc., Intelsat LLC, and Intelsat MTC LLC to Assign Licenses and Authorizations and Request for a Declaratory Ruling on Foreign Ownership, Authorizations Granted, *Public Notice*, IB Docket No. 04-235, 19 FCC Rcd 21216 (2004).

[61] *Intelsat, Ltd. Form 20-F, Annual Report Pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934 for the fiscal year ended December 31, 2004*, at 94.

Direct Access

- Section 641(a) of the ORBIT Act requires that users and service providers be permitted to obtain Level 3 direct access to INTELSAT capacity.[62] Previously, the Commission decided in a rulemaking proceeding, that Level 3 direct access is in the public interest.[63] The concept of direct access became moot with INTELSAT privatization on July 18, 2001, because Intelsat LLC, as a private company, does not have Signatories.

- Prior to INTELSAT's privatization, the Commission implemented the requirement in Section 641(b) of the ORBIT Act that the Commission complete a rulemaking "to determine if users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment directly from INTELSAT to meet their service or capacity requirements."[64] In September 2000, the Commission released a Report and Order requiring Comsat and direct access customers to negotiate commercial solutions if possible to ensure that sufficient opportunity is available for parties to negotiate commercial solutions.[65]

- On March 13, 2001, Comsat submitted a report detailing the results of its negotiations and maintaining that direct access opportunities are increasing for those who want them. For example, the negotiations resulted in a commercial agreement between Comsat and WorldCom. The Commission placed Comsat's report on public notice, including Comsat's request to terminate the proceeding.[66] With INTELSAT's privatization and Intelsat Ltd.'s purchase of Comsat,[67] on November 21, 2002, the Commission released an Order that concluded that the underlying basis for Section 641(b) no longer existed, and terminated the proceeding.[68] In terminating the proceeding, the Commission noted that the termination does not imply any abdication of the Commission's appropriate oversight of Intelsat Ltd., and that as a U.S. licensee, Intelsat Ltd., will be subject to the same Commission oversight as any similarly-situated company authorized to provide services in the United States.

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[62] 47 U.S.C. § 765(a).

[63] Direct Access to the INTELSAT System, *Report and Order*, IB Docket No. 98-192, 15 FCC Rcd 15703 (1999). Level 3 direct access permits non-signatory users and service providers to enter into contractual agreements with INTELSAT for space segment capacity at the same rates that INTELSAT charges its Signatories without having to use a Signatory as a middleman.

[64] 47 U.S.C. § 765(b).

[65] Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, Report and Order*, IB Docket No. 00-91, 15 FCC Rcd 19160 (2000).

[66] Public Notice, Report No. SPB-166, April 6, 2001.

[67] On October 25, 2002, the Commission approved the assignment of various earth station licenses, private land mobile radio licenses and international 214 applications from Comsat Corporation to Intelsat, Ltd.

[68] Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, Order,* IB Docket No. 00-91, 17 FCC Rcd 24242 (2002).

Regulatory Fees

- The ORBIT Act authorizes the Commission "to impose similar regulatory fees on the United States signatory which it imposes on other entities providing similar services."[69] On July 10, 2000, the Commission released an Order concluding that Comsat should pay a proportionate share of the fees applicable to holders of Title III authorizations to launch and operate geosynchronous space stations.[70] Consistent with past decisions, the Commission stated that the costs attributable to space station oversight include costs directly related to INTELSAT signatory activities and are distinct from those recovered by other fees that Comsat pays, such as application fees, fees applicable to international bearer circuits, fees covering Comsat's non-Intelsat satellites, and earth station fees.[71] In 2002, the Circuit Court of Appeals for the District of Columbia held that the Commission's actions to impose regulatory fees on Comsat were justified on the basis that the underlying policy of Section 9 of the Communications Act of 1934, as amended, favoring recovery of regulatory costs gave the Commission good reason to require Comsat to bear its proportionate share of space station fees.[72]

- Post-privatization, Intelsat, as a U.S. licensee, has paid the required regulatory fees mandated by Section 9 of the Communications Act 1934.

B. Status of INTELSAT Privatization

Intelsat privatized and became a U.S. licensee, as of July 18, 2001, transferring its assets to a commercial corporation. Pursuant to international agreement, an intergovernmental organization known as the International Telecommunications Satellite Organization ("ITSO") remained. ITSO, through a "Public Services Agreement" with Intelsat LLC, monitors the performance of the company's public service obligations to maintain global connectivity and global coverage, provide non-discriminatory access to the system, and honor the lifeline connectivity obligation to certain customers, specifically, those customers in poor or underserved countries that have a high degree of dependence on Intelsat LLC.[73] Under these commitments, the privatized Intelsat LLC has made capacity available to lifeline users at fixed pre-privatization costs for approximately 12 years. ITSO has no operational or commercial role.

Upon privatization, substantially all of INTELSAT's operational assets and liabilities were transferred to several companies within an affiliated group with a holding company structure. The companies have created fiduciary Boards of Directors and based on the record

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[69] 47 U.S.C. § 765a(c). A 1999 decision of the United States Court of Appeals for the District of Columbia Circuit in *PanAmSat Corp. v. FCC,* 198 F.3d 890 (D.C. Cir. 1999), set aside and remanded the Commission's 1998 fee order, which did not assess a fee against Comsat.

[70] *In re* Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *MD* Docket No. 00-58, 15 FCC Rcd 6533 (para. 17) (2000).

[71] *Id.*

[72] *See Comsat Corporation vs. FCC and PanAmSat Corp.*, 283 F.3d 344 (D.C. Cir. 2002).

[73] *INTELSAT Assembly of Parties Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting,* AP-25-3E FINAL W/11/00, para. 6-8 (Nov. 27, 2000) ("2000 Assembly Decision").

before us, the selection procedure for members of the Board of Directors of Intelsat, Ltd. has resulted in a board that is compliant with the ORBIT Act. In addition, our review of the record before us supports our finding that privileges and immunities enjoyed by the pre-privatized INTELSAT had been terminated consistent with the requirements of the ORBIT Act. The licensed companies have licenses through notifying Administrations in countries (United States and the United Kingdom) that have effective competition laws and have commitments under the WTO Agreement that include non-discriminatory access to their satellite markets.[74] These companies are subject to U.S. or U.K. licensing authorities and conduct satellite coordinations according to ITU procedures under the auspices of these authorities.

Additionally, as detailed above, at the end of 2004 the Commission authorized the transfer of control of Intelsat's licenses and authorizations to Zeus, and the transaction was consummated in 2005.[75] The Commission determined that Intelsat's certification complied with the ORBIT Act and it could forgo an IPO and listing of securities.[76] Thus, the Commission concluded that the provisions relating to additional services under Section 602 of the ORBIT Act were no longer applicable to Intelsat.[77]

II. Views of INTELSAT Parties on Privatization

The Commission, in response to the Public Notice for this Report, has not received any views directly from the INTELSAT Parties[78] regarding privatization.

III. Views of Industry and Consumers on Privatization

Intelsat and Inmarsat filed comments in response to the Commission's March 22, 2007 public notice inviting comments related to the development of this Report to Congress.[79] The Commission has not received any comments from other industry members or consumers regarding privatization.

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[74] *Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that form a Global Communications System in Geostationary Orbit*, Intelsat LLC Supplemental Information, at 3 (August 17, 2001).

[75] *See* page 5-6 above.

[76] *See* page 6 above and footnote 27.

[77] *Id*.

[78] The INTELSAT Parties are nations for which the INTELSAT agreement has entered into force. 47 U.S.C. § 769(a)(4)(A). Following privatization, the ITSO Agreement defines "Party" to mean a State for which the ITSO Agreement has entered into force or has been provisionally applied. *See* Agreement Relating to the International Telecommunications Satellite Organization, As Amended by the Twenty-Fifth (Extraordinary) Assembly of Parties in Washington, D.C. (Nov. 17, 2000), at Art. I(p).

[79] *See* footnote 13 above. A copy of these comments are enclosed in this Report.

Intelsat Privatization Comments

Intelsat contends that, as a privatized entity, it continues to face intense competition in the commercial environment and notes its efforts to respond to competitive market forces.[80] For example, since its filing in last year's ORBIT Act Report, Intelsat completed the acquisition of PanAmSat. Intelsat maintains that its acquisition of PanAmSat has enabled it to offer expanded communications service offerings to consumers at competitive prices thereby increasing competition in the marketplace. Intelsat also maintains that its privatization continues to have a positive impact on the global marketplace for communication services. Specifically, Intelsat contends, that with its acquisition of PanAmSat, its satellite fleet has grown to 51 satellites. This increased fleet has enable Intelsat to become a leader in the delivery of video content, transmission of corporate data, and the provisions of government communications solutions. Intelsat further asserts that it faces significant competition from traditional providers of satellite services, as well as newer providers and resellers of satellite services. Intelsat also states that it faces significant competition from terrestrial sources, such as fiber optic cable, broadband-enabled IP applications and terrestrial wireless platforms.

Inmarsat Privatization Comments

Inmarsat notes that in June 2005, the Commission determined that Inmarsat's privatization was consistent with the non-IPO criteria of the ORBIT Act, as amended, in part, because the Commission found that Inmarsat had effectuated a substantial dilution of former Inmarsat Signatories' financial interests in the company. Inmarsat further states that shortly after the Commission determined that Inmarsat met the applicable ORBIT Act criteria, Inmarsat completed a successful IPO, resulting in a listing of Inmarsat shares on the London Stock Exchange. As a result of this IPO, Inmarsat contends that the remaining interests of former Inmarsat Signatories and foreign government entities that owned Inmarsat shares were diluted.[81]

In its comments, Inmarsat also raises concerns regarding its business and contractual relationships with certain former signatories such as France Telecom (which was acquired by Inceptum, an entity controlled by Apax Partners S.A.), Telenor MSS, and Stratos Global Corp. (Stratos).[82] The issues raised by Inmarsat have also been raised in the Telenor/Inceptum transfer of control transaction[83] and the Stratos transfer of control transaction.[84] The Telenor/Inceptum

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[80] Intelsat Comments at 1-2.

[81] Specifically, Inmarsat notes that after the IPO, no Inmarsat shareholder now owns 10 percent or more of the company. Additionally, Inmarsat contends that today, no former Signatory owns 5 percent or more of the Company and the aggregate foreign ownership is nominal. Inmarsat Comments at 2.

[82] Specifically, Inmarsat contends that restrictions exist in the form of "contractual limitations" in the distribution agreements on an Inmarsat subsidiary, Inmarsat Global Ltd., which allows a limited number "gatekeepers" to have the ability to provide Inmarsat services directly to end users. Inmarsat Comments at 2.

[83] *See* Telenor ASA, Transferor and Inceptum 1 AS, Transferee, File No. SES-T/C-20061129-02062 (filed November 29, 2006); Comments of Inmarsat plc, Telenor ASA, Transferor and Inceptum 1 AS, Transferee, IB Docket No. 06-225, DA-06-2565 (filed January 22, 2007). *See also* MobSat S.A.S. and FTMSC US, LLC, File No. SES-20060804-01315 (filed August 4, 2006). Accepted for Filing Public Notice, SCS Report No. SES-00846 (August 16, 2006).

transfer of control transaction was approved on May 23, 2007.[85] The Stratos transfer of control transaction is currently pending before the Commission.

Additionally, Inmarsat maintains that it continues to provide a wide range of innovative services to users with communications needs, including a growing number of government and commercial users in the United States and around the world. Inmarsat notes that when the Commission granted Inmarsat market access to the United States in 2001, the Commission found that the presence of Inmarsat in the United States market "serve[s] the public interest by increasing competition and providing additional services for U.S. consumers." Inmarsat further maintains that both the private and public sectors use the Inmarsat system for various communications purposes. Specifically, Inmarsat points out that users such as the U.S. military, the Department of Homeland Security (including the Federal Emergency Management Agency (FEMA) and the Coast Guard), U.S. Executive Branch and Congressional officials, the New York City Fire Department, CNN, ABC, CBS, National Public Radio, the Red Cross, and numerous major airlines and shipping lines throughout the world rely on Inmarsat for their critical communications needs.[86]

Inmarsat further maintains that it continues to expand its capabilities and service offerings. Specifically, Inmarsat contends that it has invested more than $1.5 billion in the deployment of the new Inmarsat 4 ("I-4") satellite network. Inmarsat's BGAN services operate on the I-4 network. Inmarsat notes that its BGAN services provide high speed voice and broadband services have been further modified to include advanced capabilities. Additionally, Inmarsat points out that it has launched and is currently providing services on two of its I-4 satellites, including one that is serving the United States. Further, Inmarsat states that a third I-4 satellite is fully constructed and tested and launch arrangement plans are being finalized.[87]

Additionally, Inmarsat emphasizes its continued innovative efforts to enhance the flexibility and mobility of its services. Specifically, Inmarsat states that in September 2006 it announced its collaboration with ACeS International Limited, a leading Asian hand-held voice services operator. Inmarsat states its plans to provide low-cost hand-held and fixed voice services in the United States using the I-4 network in late 2008.[88]

Finally, Inmarsat asserts that it continues to face substantial competition in the market place from a variety of different sources, including global and regional MSS competitors as well as increased competition from FSS providers.[89]

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[84] Stratos Global Corp., Consolidated Application for Consent to Transfer of Control, File Nos. SES-T/C-20070404-00440, SES-T/C-20070404-00441, SES-T/C-20070404-00442, SES-T/C-20070404-00443.

[85] *Telenor ASA, Transferor, and Inceptum AS, Transferee, Seek FCC Consent to Transfer Control of Licenses and Authorizations and Request a Declaratory Ruling on Foreign Ownership,* IB Docket No. 06-225, *Public Notice*, DA 07-2163, (IB/WTB/OET May 2007)

[86] Inmarsat Comments at 7.

[87] Inmarsat Comments at 7-8.

[88] Inmarsat Comments at 8.

[89] Inmarsat Comments at 9.

IV. Impact of Privatization

Section 646 requires that the Commission report on the impact of privatization on U.S. industry, jobs, and industry access to the global market.

INTELSAT's privatization from an intergovernmental organization to a fully commercial operation has enabled it to more effectively compete to provide services to U.S. commercial and governmental customers. Privatization has enabled Intelsat to compete freely for U.S. satellite business opportunities, thereby increasing competition in the U.S. market and encouraging the development of service offerings to U.S. customers.

Inmarsat's privatization also appears to have had a positive impact on the domestic market.[90] Privatization has provided Inmarsat the opportunity to develop new services for the U.S. market that potentially will result in the expansion of service options and providers for customers in the United States. Inmarsat asserts in its comments that it faces increased competition from MSS providers, as well as FSS providers. Thus, this increased competition for communications services also promises to lead to increased industry competition. As a result of privatization and Commission authorization, distributors were given access rights to distribute Inmarsat services in the United States.

Inmarsat maintains that its services promote economic growth and job development in the United States. Inmarsat notes the use of Inmarsat's system in the Deere Company's precision farming service, and the use of Inmarsat's system for ship operations and crew calling by U.S.-flag vessels. Inmarsat also points to use of its system in managing the sustainability of fisheries, and the use of portable terminals in remote regions by U.S. companies in energy, mining exploration, construction, and journalism activities. Additionally, Inmarsat states that it continues to work with numerous service distributors, equipment suppliers, and application developers throughout the United States, which, in turn, leads to job production and stimulates new economic growth opportunities.

Pursuant to the United States' obligations as the Notifying Administration to the ITU for Intelsat's fixed satellite service C-and Ku-band frequency assignments transferred at privatization, the Commission has participated in a number of international satellite coordination negotiations as Intelsat's licensing Administration. Since the 2006 Report to Congress, the Commission has participated in coordination meetings with Argentina on behalf of Intelsat and a number of other U.S. licensees. Over the past reporting period, satellite coordination agreements has been concluded via correspondence with a number of Administrations including, the Republic of Hungary, the Republic of Indonesia, the Kingdom of Norway, the Islamic Republic of Pakistan, the Kingdom of Thailand, the Eastern Republic of Uruguay and the United Kingdom.

The United States has a coordination process whereby U.S. operators may reach operational arrangements with operators of other Administrations. These operational arrangements are then submitted to the operators' respective Administrations for approval. Once approved by both Administrations, the operational arrangements become, or form the basis for, a coordination agreement between the Administrations under the ITU procedures. Since the 2006 Report to Congress, Intelsat has concluded operational arrangements by correspondence with Japan. In due course, this will lead to coordination agreements between the United States and the foreign Administration.

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[90] Inmarsat Comments at 4-5.

Finally, both Inmarsat's and INTELSAT's privatization appears to have had a positive impact on the global marketplace for communications services by ensuring increased competition and increased access. Inmarsat and Intelsat have placed a priority on continued provision of service to all portions of the globe. Additionally, Inmarsat remains committed to its support of global maritime distress and safety services ("GMDSS").[91] We also note that the ITSO Assembly of Parties continues to maintain that Intelsat should be contractually bound under a Public Service Agreement with the ITSO to ensure continued global connectivity -- particularly to countries dependent on Intelsat's satellite services.[92]

V. Summary

The Commission has undertaken a number of proceedings required by or related to the ORBIT Act. The Commission will continue to implement and enforce the requirements of the ORBIT Act. On the whole, we believe that U.S. policy goals regarding the promotion of a fully competitive global market for satellite communications services are being met in accordance with the ORBIT Act. The Commission will continue to inform Congress of the actions it takes to implement the requirements of the ORBIT Act and the impact of those actions in its next annual report.

[91] *See* http://safety.inmarsat.com/default.html?language=EN&textonly=False. *Inmarsat Finance plc. Offering Circular for 7 5/8% Senior Notes,* January 27, 2004, p. 114.

[92] ITSO Assembly of Parties, Record of Decision of the Thirty-First (Extraordinary) Meeting, Document AP-31-3E, Agenda Item No. 13.1(i). (dated April 6, 2007).

ATTACHMENTS:

Comments, April 6, 2007

Comments of Intelsat LLC

Comments of Inmarsat PLC

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re:	)	
	)	
Report to Congress Regarding the Orbit Act	)	IB Docket No. 07-50
	)	

COMMENTS OF INTELSAT

Intelsat LLC and its affiliated entities (collectively, "Intelsat") hereby respond to the Federal Communications Commission's ("FCC" or "Commission") request for comments in the above referenced proceeding.[1] The Commission seeks comments in order to compile its eighth report to Congress pursuant to Section 646 of the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act" or "Act").[2]

Intelsat continues to respond to market forces in a competitive environment. Since Intelsat last filed comments in March 2006, it has completed its acquisition of PanAmSat Holding Corporation ("PanAmSat").[3] The acquisition of PanAmSat has allowed Intelsat to offer expanded communications services, thus increasing competition in the market. This, in turn, benefits consumers, who have more choices available to them at more competitive prices.

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[1] *International Bureau Information: Report to Congress Regarding the ORBIT Act*, Report No. SPB-218 (Mar. 22, 2007) (Public Notice).

[2] Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. 106-180, 114 Stat. 48 (2000), *as amended*, Pub. L. No. 107-233, 116 Stat. 1480 (2002), *as amended*, Pub. L. No. 108-228, 118 Stat. 644 (2004), *as amended*, Pub. L. No. 108-371, 118 Stat. 1752 (2004).

[3] *See Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, and PEOP PAS, LLC, Transferors, and Intelsat Holdings, Ltd., Transferee, Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp., and PanAmSat H-2 Licensee Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 7368 (2006).

Intelsat's privatization thus continues to have a positive impact on the global marketplace for communications services. Intelsat – with its fleet of 51 satellites – is a leader in the digital delivery of video content, the transmission of corporate data and the provisioning of government communications solutions.

Intelsat remains subject to intense competition in the market for communications services – from other providers of satellite services, as well as from terrestrial sources, such as fiber optic cable, broadband-enabled IP applications and terrestrial wireless platforms. New entrants continue to emerge to provide additional competition. For example, Kazakhstan last year launched its first satellite, designed to provide communications services to that country, as well as to Russia, Uzbekistan, Kyrgyzstan and Turkmenistan.[4] Also, last year Loral Skynet resumed offering fixed satellite services in North America after a two-year absence.[5] Intelsat has responded, and will continue to respond, to these competitive market forces.

Respectfully submitted,

Intelsat LLC

By: /s/ *Jennifer D. Hindin*
Bert W. Rein
Jennifer D. Hindin
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006-2304
202.719.7000

Its Attorneys

April 6, 2007

[4] "Kazakhstan satellite enters orbit", USA Today, June 18, 2006, *available at* http://www.usatoday.com/news/world/2006-06-18-kazakhstan-satellite_x.htm (last visited Apr. 6, 2007).
[5] "Loral Skynet Re-enters U.S. and North American Fixed Satellite Services Market", Loral Skynet Press Release, Mar. 22, 2006, *available at* http://www.spaceref.com/news/viewpr.html?pid=19329 (last visited Apr. 6, 2007).

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Report to Congress Regarding	)	IB Docket No. 07-50
The ORBIT Act	)	

COMMENTS OF INMARSAT PLC

Inmarsat plc (formerly Inmarsat Group Holdings Limited) ("Inmarsat") submits these Comments in response to the Public Notice inviting input to be reflected in the Commission's progress report to Congress on implementing the Open-Market Reorganization for the Betterment of International Telecommunications Act (the "ORBIT Act").[1]

I. INMARSAT HAS SATISFIED ITS ORBIT ACT REQUIREMENTS, BUT RESTRICTIONS IMPOSED BY FORMER SIGNATORIES REMAIN

The purpose of the ORBIT Act is to "promote a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services and equipment by fully privatizing . . . INTELSAT and Inmarsat."[2] While Inmarsat has made significant strides in achieving this goal, certain contractual restrictions imposed on it by former Signatories prevent the legislative goal of a "fully competitive global market for satellite communications services" from being fully realized until April 2009 – and the currently proposed consolidation of the mobile satellite service ("MSS") businesses of Telenor Satellite Services ("Telenor") and FTMSC ("France Telecom") threatens to hinder this goal even further in the meantime.

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1 Public Notice, Report No. SPB-218, DA 07-1371 (rel. Mar. 22, 2007).

2 *Id.* at 1; *see also* ORBIT Act, Pub. L. No. 106-180, 114 Stat 48, § 2 (2000).

Inmarsat converted from an intergovernmental organization ("IGO") to a private company in 1999 in a manner that was ORBIT Act-compliant.[3] In June 2005, the Commission found that Inmarsat had satisfied the requirement to effectuate a substantial dilution of former Signatory financial interests in the company.[4] Just days later, Inmarsat reduced former signatory and foreign government ownership even further, by completing one of the most successful equity IPOs by a satellite services company. Today, Inmarsat's shares are traded on the London Stock Exchange, no shareholder holds more than 10% of the company's stock, no former Inmarsat Signatory owns five percent or more of the company, and the aggregate ownership by foreign governments is nominal.

There are, however, certain vestiges of Inmarsat's former IGO structure that remain despite Inmarsat's successful privatization and satisfaction of specific ORBIT Act criteria. Virtually all of Inmarsat's business must continue to be provided under an anachronistic distribution structure left over from its pre-privatization days, under which a limited number of "gatekeepers" have the ability to provide Inmarsat services directly to end users. The perpetuation of that structure was mandated by former Signatories (including Telenor, COMSAT, and France Telecom) as part of the Inmarsat privatization process in order to preserve their historical exclusivity. These restrictions persist today in the form of contractual limitations in the distribution agreements on an Inmarsat subsidiary, Inmarsat Global Ltd., and are not scheduled to expire until April 2009.

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3 *See Comsat Corp. d/b/a Comsat Mobile Communications, et al.*, 16 FCC Rcd 21661 (2001) ("*Comsat*").

4 *Inmarsat Group Holdings Limited, Petition for Declaratory Ruling Pursuant to Section 621(5)(F) of the ORBIT Act*, 20 FCC Rcd 11366 (2005).

A. The Pending Consolidation of the France Telecom and Telenor MSS Businesses Presents Significant Issues

Due to recent consolidation among Inmarsat distributors, today, only three distributors remain who offer the full suite of Inmarsat services on a global basis: France Telecom, Telenor, and Stratos Global Corporation ("Stratos"). Inceptum (an entity controlled by Apax Partners S.A.) recently acquired the France Telecom MSS business, and has proposed to acquire Telenor and place those two global Inmarsat distributors under common control.[5] Those two distributors are responsible for approximately 40% of all Inmarsat services worldwide.

As Inmarsat explained in commenting on Inceptum/Apax's proposed combination of the Telenor MSS business with the former France Telecom MSS business,[6] that horizontal consolidation is inconsistent with the goal of the ORBIT Act to "promote a fully competitive global market for satellite communications services."[7] As detailed more fully in that proceeding, reducing to *two* the number of gatekeepers who have the ability to provide the full suite of Inmarsat services globally is likely to result in U.S. businesses, state, local and federal governments, and the U.S. military alike having fewer competitive choices available to them.[8]

The origin of the problem is the distribution structure created by former Signatories in an effort to preserve their exclusivity. Historically, Inmarsat was established as a global "wholesaler" of MSS to Signatories in various countries who had exclusive rights to "land" Inmarsat services, and then resell them. To this day, the end users of Inmarsat services

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5 *See* Telenor ASA, Transferor and Inceptum 1 AS, Transferee, File No. SES-T/C-20061129-02062 (filed Nov. 11, 2006); MobSat S.A.S. and FTMSC US, LLC, File No. SES-AMD-20060804-01315 (filed Aug. 8, 2006).

6 *See* Comments of Inmarsat plc, Telenor ASA, Transferor and Inceptum 1 AS, Transferee, IB Docket No. 06-225, DA 06-2565 (filed January 22, 2007).

7 ORBIT Act, 114 Stat 48, § 2.

8 Comments of Inmarsat plc, IB Docket No. 06-225, at 2.

are still required to purchase Inmarsat offerings through a controlled distribution network. These restrictions may have made sense at a time when Signatories both owned and controlled Inmarsat, and contributed to the capital costs of developing a multi-billion dollar satellite network. But in a world where Inmarsat has been fully privatized and operates as an independent, publicly-traded commercial enterprise, more flexibility in the operation of that distribution network would enhance competitive choices for Inmarsat's MSS offerings.

Yet the distribution requirements imposed by former Signatories continue to provide their MSS businesses with special privileges and artificial protection from competition.[9] Specifically, Inmarsat is forced to sell services through an elite club of middleman distributors who impose a markup on resellers and on end users. In the case of "traditional" Inmarsat services,[10] entry into this "club" of distributors is effectively restricted to entities that were part of the Inmarsat distribution structure at the time of privatization. This means that distribution rights to services comprising over 90% of Inmarsat's revenues still lie with businesses established by former Signatories.

Although Inmarsat technically has the right to appoint additional distributors for its services, this right is severely constrained by significant artificial barriers to entry, many of which are dictated by the exclusivity arrangements imposed by the former Signatories. Any

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[9] The policy concerns raised by the Inceptum/Apax transaction have their basis in longstanding Commission policy and the ORBIT Act, rather than those present more generally in a merger analysis. Inmarsat is not advocating, and does not believe there is, any separate "market" for Inmarsat MSS services.

[10] By "traditional," Inmarsat means the types of mobile voice and data services that Inmarsat historically provided before the launch of its new generation of spacecraft, and on which hundreds of thousands of end-users have invested significant sums in terminal and network equipment. This term does not include the new generation of "BGAN" land-mobile services, or the forthcoming BGAN aeronautical and maritime services that Inmarsat is still developing, each of which requires different terminals than the installed base of end-user equipment used for traditional Inmarsat services, such as the terminals already installed on large numbers of ships and planes.

potential new distributor of these traditional services must invest in the construction and operation of an expensive gateway earth station facility that "lands" these services, and also must meet a number of other threshold qualification criteria. To be qualified, an entity may not do what is common in the telecommunications industry and simply contract for access to an existing gateway. As a result, in the eight years since Inmarsat was converted from an IGO to a commercial enterprise, Inmarsat has not been able to appoint a single new distributor for its traditional services. And even when Inmarsat has sought to appoint distributors for other, new services provided over the I-4 network, it has faced legal challenges from its long-standing distributors, including Telenor and France Telecom, who seek to maintain their exclusive province over Inmarsat service distribution.[11] Only those distributors who benefit from this archaic "middleman" structure, including Telenor and France Telecom, have the ability to lift this restriction. And Inceptum/Apax seeks to control two of those distributors.

B. The Proposed Stratos Transaction Facilitates the Continued Operation of Stratos as an Independent Distributor and Preserves Future Options

A separate transaction has recently been proposed relating to the other major distributor of Inmarsat services, Stratos. That transaction would facilitate the continued operation of Stratos as an independent provider of Inmarsat services, and at the same time preserve the option for Inmarsat to indirectly acquire Stratos when the contractual restrictions in Inmarsat's current distribution agreements expire in April 2009.[12] Stratos and a Trustee are seeking Commission consent to the indirect transfer of control of Stratos' FCC-licensed subsidiaries from the current Stratos public shareholders to an irrevocable trust. The Trust has

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[11] For example, Inmarsat recently appointed one of its longstanding manufacturers, Thrane & Thrane, as a distributor of its new BGAN services. Existing Inmarsat distributors, including Telenor and France Telecom, initiated legal challenges to that appointment.

[12] Stratos Global Corp., Consolidated Application for Consent to Transfer Control, File No. SES-T/C-INTR2007-00820 et al., (filed April 4, 2007).

been established by CIP Canada Investment Inc. ("CIP Canada"), a subsidiary of Communications Investment Partners Limited, a professional investment company. The Trustee will hold title to the Stratos shares, and will exercise full voting authority over the shares for the life of the trust. The proposed transaction will be indirectly financed by Inmarsat Finance III Limited ("Inmarsat Finance"), a wholly-owned subsidiary of Inmarsat, and Inmarsat Finance will hold a call option exercisable once the contractual restrictions expire. The proposed transaction offers the public interest benefits recognized by the Commission in other "going private" transactions.[13] It will afford the Stratos public shareholders an opportunity to receive a fair price for their shares, and enable Stratos management to maintain its ability to operate and expand the Stratos business in the best interests of the company and its customers.

Should Inmarsat Finance choose, in the future, to exercise its call option, the vertical integration of Inmarsat with one of its distributors, Stratos, would also provide significant public interest benefits, consistent with the competitive goals of the ORBIT Act. As the Commission has previously recognized, vertical integration "can reduce transaction costs, limit free-riding by internalizing incentives, and take advantage of technological economies."[14] Moreover, "vertical integration may reduce prices in the downstream market."[15] On the other hand, if CIP Canada ultimately were to acquire control over Stratos, the transaction would provide the infusion of management expertise that would benefit Stratos and its customers, and place control of Stratos in the hands of an independent entity that has no ties to the business of any former Signatory. In the meantime, the Commission and the public will be assured that

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[13] *See, e.g., Hughes Network Systems, Ltd.*, 20 FCC Rcd 8080 (2005).

[14] *SBC Communications, Inc and AT&T Corp.*, 20 FCC Rcd 18290, 18387, ¶ 190 (2006.)

[15] *Id.*

further consolidation of the Inmarsat distribution network will not occur while the contractual restrictions remain.

II. INMARSAT PROMOTES ECONOMIC GROWTH THROUGH INNOVATIVE SERVICE OFFERINGS

Notwithstanding the challenges faced by Inmarsat discussed above, Inmarsat continues to provide innovative services to a growing number of government and commercial users in the United States and around the world. In granting United States market access to the Inmarsat MSS system in 2001, the Commission determined that the presence of Inmarsat in the United States market "serve[s] the public interest by increasing competition and providing additional services for U.S. consumers."[16] Examples of the users who rely on Inmarsat for their critical communications needs include: the U.S. military, the Department of Homeland Security (including the Federal Emergency Management Agency (FEMA) and the Coast Guard), U.S. Executive Branch and Congressional officials, the New York City Fire Department, CNN, ABC, CBS, National Public Radio, the Red Cross, and nearly every major airline and shipping line throughout the world. Inmarsat continues to expand its capabilities and service offerings, and has invested more than $1.5 billion in the deployment of the new Inmarsat 4 ("I-4") satellite network, which provides innovative MSS services on one of the most advanced commercial communications satellite fleets in orbit. Two of the I-4 satellites have already been launched and are providing service, including one serving the United States, and Inmarsat has announced that the third I-4 satellite, which is fully constructed and tested, will be launched as soon as launch arrangements can be finalized.

Inmarsat's Broadband Global Area Network ("BGAN") service, which operates on the I-4 network, provides voice and broadband service at speeds of almost half a megabit per

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[16] *Comsat*, 16 FCC Rcd at 21661, ¶ 1.

second, and uses highly portable and easily deployed "notebook sized" user terminals that are one-third the size, weight, and price of traditional Inmarsat terminals. In addition to its advanced capabilities, BGAN is also easy to set up and use. After plugging a BGAN terminal into any laptop computer with a standard USB cable (or using a Bluetooth or Wi-Fi connection), mobile users of all types have immediate voice and data connectivity regardless of the state of the terrestrial network.

Inmarsat continues to enhance the flexibility and mobility of its services. In September 2006, Inmarsat announced a collaboration with ACeS International Limited ("ACeS"), the leading Asian hand-held voice services operator, to offer low-cost hand-held and fixed voice services, initially in the Asian market in mid-2007. These hand-held voice services are planned to be provided in the United States using the I-4 network in late 2008.

Inmarsat services also promote economic growth and job development in the United States. For example, the Deere Company uses Inmarsat's satellite communications for its precision farming services. United States flag vessels have integrated Inmarsat communications into ship operations and to provide crew calling. The Vessel Monitoring System that industry and government rely on to manage the sustainability of fisheries by tracking commercial fishing vessels and enforcing fishing regulations uses Inmarsat's satellite network. Portable Inmarsat terminals are used in remote regions around the world by American companies engaged in energy and mining exploration and construction projects, and by journalists for digital news gatherings. Finally, Inmarsat continues to work with dozens of service distributors, equipment suppliers, and application developers across the United States, each of whose participation in the Inmarsat program produces jobs and stimulates new economic growth opportunities.

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Inmarsat faces substantial competition from a broad array of technologies, including those which are terrestrially based. On the satellite side alone, global and regional MSS competitors to Inmarsat include Iridium, Globalstar, MSV, Telecomunicaciones de Mexico, Informcosmos, Thuraya, ACeS, Optus MobileSat, INSAT 3C, and N-Star. Additional regional competition will be provided by ICO and TerreStar, whose 2 GHz MSS systems will serve the United States after they meet their 2007 launch milestones. Numerous distributors add to the competitive nature of this market as they compete against one another to offer MSS directly to end users.

The fixed satellite services ("FSS") industry is also a growing source of competition to MSS providers. FSS spectrum can increasingly be used to provide mobile and transportable offerings in addition to the traditional fixed services. With spectrum deregulation and advances in antenna technology, FSS providers are able to provide many of the services that once were provided on a broad scale only by MSS providers, and small FSS VSAT terminals in fact are now being deployed on ships and airplanes to provide voice and broadband connectivity to both passengers and crews.[17] The increasing competition from the FSS industry highlights the need to ensure that regulatory classifications do not unduly constrain MSS providers from serving "fixed" points, and to ensure that MSS providers have access to adequate spectrum for increasingly bandwidth-intensive MSS offerings.

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[17] *See, e.g., The Boeing Company*, 16 FCC Rcd 22645 (2001).

Inmarsat respectfully submits the above information to assist the Commission in preparing its forthcoming report to Congress.

/s/

Diane J. Cornell
Vice President, Government Affairs
INMARSAT, INC.
1101 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20036
Telephone: (202) 248-5155

John P. Janka
Jeffrey A. Marks
LATHAM & WATKINS LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004
Telephone: (202) 637-2200

Counsel for Inmarsat plc

April 6, 2006